

REMARKS

The present application includes pending claims 1-23 and 24-35, all of which stand rejected. In particular, claims 1-23 and 25-35 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 2003/0018745 (“McGowan”). Claims 1 and 9 have been amended to correct minor drafting errors. The Applicants respectfully traverse these rejections for at least the reasons previously discussed during prosecution and the following.

Claim 1 recites, in part, “scheduling the identified **additional media** according to the at least one statistic [calculated using the information related to the user request for consumption of **media**], for consumption by the user via the communication network.” Note, the **additional media** is not the same as the **media**. Instead, the claim specifically states that at least one notification of a user request for consumption of **media** is received. A statistic is calculated using the information related to the request for consumption of the **media**. **Additional media** is identified using the statistic calculated using the information related to the request for consumption of the **media**. The **additional media** is then scheduled according to the at least one statistic calculated using the information related to the request for consumption of the **media**. Independent claims 9, 17 and 27 recite similar limitations.

The Applicants previously explained that McGowan does not describe, teach or suggest “scheduling the identified **additional media** according to the at least one statistic [calculated using the information related to the user request for consumption of **media**], for consumption by the user via the communication network,” as recited, for example, in claim 1. See October 16, 2008 Amendment Under 37 C.F.R. § 1.116. The current Office Action responds, however, by stating the following:

McGow[a]n discloses receiving user requests which are subsequently stored in a database, thereafter a VCS operator based on information according to the user requests stored in said database creates a bundled collection of content including described additional content which is released according to a determined schedule by given VCS operator ([0032]-[0035]). Therefore, McGowan does teach the scheduling of additional content based on received user requests.

See November 6, 2008 Office Action at page 2 (emphasis added). As shown above, the Office Action relies on McGowan at ¶¶ [0032]-[0035] to support the assertion that McGowan discloses “scheduling the identified **additional media** according to the at least one statistic [calculated using the information related to the user request for consumption of **media**], for consumption by the user via the communication network,” as recited, for example, in claim 1. As detailed below, however, McGowan does not describe, teach or suggest these limitations. Further, the Applicants will address each of ¶¶ [0032]-[0035] of McGowan to demonstrate that the Office Action’s reliance on these paragraphs is misplaced.

McGowan discloses a system and method that includes “interactive content [that] may be custom-crafted for specific audiences (viewer base).” See McGowan at [0007]. In particular, McGowan discloses a virtual cable system (VCS) that “enables television viewers to access customized regions of the WWW [world wide web].” See *id.* at [0010].

In McGowan, “there is depicted interactive requests/responses 235 from viewers of VCS that are transmitted back from each viewer’s home.” See *id.* at [0043]. The “servers pass on key data 245 for each interactive request to the Usage and Experience Database 55 maintained by the VCS operator.” See *id.* Thus, McGowan discloses that data from a user request is passed onto the Usage and Experience Database 55 maintained by a VCS operator. However, this data is not used to schedule any programming. Instead, channels are already scheduled before the

data from a particular viewer is even received. In particular, McGowan discloses the following:

FIG. 3 is a flow chart depicting the details of the “channelization” process 150. Channelization requires a first step 155 of selecting content for a virtual channel, and then scheduling the broadcast of content at step 160. To facilitate channelization, VCS preferably implements an interactive, object-based software interface for the selection and scheduling process. ... As referred to herein a “channel” in the VCS, is a bundled collection of content, which is stored on a server and released to the WWW on a scheduled basis. The VCS operator, content provider, cable system, advertisers, or other key business partners are the entities that decide what a channel should be and how many channels there should be....

For the purposes of test marketing, the new content provider may assemble representative programming for this channel, provide the content to a VCS operator, and have the VCS operator make this “test” channel available over the WWW for test marketing purposes, including gathering history of interactivity to provide demographic information and responses to alternative advertising concepts.

* * *

The VCS additionally provides assistance in the selection process using artificial intelligence (AI) rules and recommendations. The Usage and Experience Database 55 constructed from viewer interactive requests and actions form the basis for developing AI routines.... This data is converted into rules that assist – or simply offer recommendation – in the selection of content for each channel.... For example, in creating a channel of cooking programs, **prior data** in the Usage and Experience Database 55 may **suggest** demographics patterns to stress or to avoid in choosing content. Thus, a rule may comprise a demographic pattern, for instance, only distribute Spanish speaking video content in predominantly Spanish neighborhoods. The AI Interface additionally functions to suggest, but not control the process of content selection.

See *id.* at ¶¶ [0032]-[0033] (emphasis added). As shown above, McGowan discloses that the VCS operator, content provider, cable system, advertisers, or other key business partners decide what a channel (i.e., a bundled collection of content stored on a server and released to the WWW

on a scheduled basis) should be and how many channels there should be. McGowan does not describe, teach or suggest, however, that the entities that determine channels are doing so using statistics based on previous requests for media.

Further, McGowan discloses that data related to a user selection is passed on to the Usage and Experience Database 55. *See id.* at ¶ [0043]. However, there is nothing in McGowan that describes, teaches or suggests that **this data is used to schedule additional media**. Instead, the Usage and Experience Database 55 is constructed from a plurality of requests and converted into AI routines. *See id.* at ¶ [0033]. The AI routines are **used to suggest, but not control**, content selection.

Next, ¶¶ [0034]–[0035] of McGowan discloses a “scheduling step 160 [that] performs the scheduling of content.” Indeed, McGowan discloses that the “selection of primary and secondary content may be conducted in parallel.” *See id.* at ¶ [0035]. As such, the “secondary content” cannot be based on statistics regarding the “primary content” due to the fact that the both are concurrently selected. While the “AI tool provides suggestions for matching primary and secondary content” (*see id.*), there simply is nothing in this paragraph, nor the remainder of McGowan, that describes, teaches or suggests that the scheduling is based on statistics calculated from previous media requests.

In McGowan, viewers are channeled “to specific parts of the WWW where they can view ‘standardseeming’ but specifically targeted television channels.” *See id.* at ¶ [0050]. **These “standardseeming” targeted television channels are already scheduled.** The specific user’s request does not determine the scheduling of those channels.

Thus, the Applicants respectfully submit that McGowan does not describe, teach or suggest “scheduling the identified **additional media** according to the **at least one statistic**

[calculated using the information related to the user request for consumption of media], for consumption by the user via the communication network,” as recited in claim 1. Independent claims 9, 17 and 27 recite similar limitations. For at least these reasons, the Applicants respectfully submit that McGowan does not anticipate claims 1-23 and 25-35.

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration of the claim rejections for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: January 6, 2009

MCANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100

/Joseph M. Butscher/
Joseph M. Butscher
Registration No. 48,326